

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MAGDALINA KALINCHEVA M.D.,

CASE NO. 13-CV-384-MMA(BLM)

Plaintiff,

VS.

JESSE NEUBARTH

Defendant

ORDER

(I) DENYING MOTION TO FOR
LEAVE TO PROCEED *IN FORMA
PAUPERIS*; and

(2) *SUA SPONTE* DISMISSING CASE

[Doc. No. 3]

Plaintiff Magdalina Kalincheva, proceeding *pro se*, moves the Court for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. For the reasons stated below, the Court *sua sponte* dismisses Plaintiffs' Complaint and grants Plaintiffs leave to amend.

Plaintiff has submitted an *in forma pauperis* application that makes the showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for *in forma pauperis* status does not complete the inquiry required by the statute. “A district court may deny leave to proceed *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting *Tripati v. First Nat. Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987)); *see also Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the District Court to examine any application for leave to proceed *in forma pauperis* to determine whether the

1 proposed proceeding has merit and if it appears that the proceeding is without merit, the court is
2 bound to deny a motion seeking leave to proceed in forma pauperis.”). Moreover, the Court must
3 dismiss an *in forma pauperis* case at any time if the allegation of poverty is found to be untrue or if
4 it is determined that the action is frivolous or malicious, fails to state a claim on which relief may
5 be granted, or seeks monetary relief against an immune defendant. *See* 28 U.S.C. § 1915(e)(2). A
6 complaint is legally frivolous when it lacks an arguable basis in law or in fact. *Neitzke v.*
7 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).
8 Under this standard, a court must dismiss a complaint as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
10 490 U.S. at 327; *see also* 28 U.S.C. § 1915(e).

11 Federal Rule of Civil Procedure 8(a) provides: “A pleading that states a claim for relief
12 must contain . . . a short and plain statement of the claim showing that the pleader is entitled to
13 relief.” Although Rule 8 “does not require ‘detailed factual allegations,’ . . . it [does] demand[]
14 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556
15 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other
16 words, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires
17 more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
18 will not do.” *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
19 Generally, courts must broadly construe pleadings filed by *pro se* litigants, affording *pro se*
20 plaintiffs any benefit of the doubt. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Thompson v.*
21 *Davis*, 295 F.3d 890, 895 (9th Cir. 2002). However, even when receiving liberal construction, *pro*
22 *se* litigants must still comply with the Federal Rules of Civil Procedure, including Rule 8. *See*
23 *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

24 The Court finds the Complaint does not sufficiently show how Plaintiff is entitled to relief
25 in federal court. As an illustration of the type of rambling and incoherent text contained in the
26 Complaint, the first page of her Complaint reads as follows:

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1 **1. Jurisdiction**

2 **Basis of Jurisdiction is Federal question - material and fundamental violation of**
3 **I-864 Federal contract affidavit of support itself: family based, legally binding,**
4 **indefinite validity and violation of Federal Laws from the beginning in 1991. I-**
5 **864 never started enforcement for Magdalina as Defendant Jesse during our**
6 **marriage never created income sources for me, I was wrongfully unemployed,**
7 **kept me in extreme poverty, no car extreme cruelty causing physical disability,**
8 **control, oppression, stole all of my marital property, then filled [sic] for divorce**
9 **and illegal “UD” acts in WRONG LOCAL COURTS in which none of our**
10 **documents were filed, did not know anything about federal contract did not**
 consider it, did not consider the fact that Magdalina is not supposed to be on
 government assistance of any kind at any time such as Food Stamps now, had no
 jurisdiction. Federal STATUTES and regulations are violated by Defendant
 from the beginning of 1991 and by wrong courts they filed for divorce since 1992
 which resulted in STOLEN LIFE FOR PLAINTIFF 67 YEARS, grand thefts,
 hostage situation, impossible to live here impossible to do anything,
 WRONGFULL [sic] UNEMPLOYMENT, inevitable public charge and murder
 setup for her, new damages now caused physical disability and shortening of her life.

11 [Doc. No. 1 at 2 (all formatting in original).] Plaintiffs' Complaint continues in this manner for a
12 total of 85 pages. The civil cover sheet attached to the Complaint lists 8 U.S.C. § 1183, 8 U.S.C.
13 § 1182, 8 U.S.C. §§ 1601, 1611, 1612, 1613 & 1621 as federal statutes under which Plaintiff is
14 filing. [Civil Cover Sheet, Doc. No. 1-2 at 1.] However, it is impossible to decipher any such
15 causes of action, or any other cognizable legal theories, from the text of Plaintiffs' Complaint
16 itself.

17 To the extent Plaintiff alleges a breach of an “I-864 contract,” she has previously attempted
18 to bring an identical claim against Defendant in the Eastern District of California. *See Kalincheva*
19 *v. Neubarth*, 2012 U.S. Dist. LEXIS 154334 (E.D. Cal. Oct. 25, 2012) (Magistrate Judge's Report
20 and Recommendation subsequently adopted in full by District Judge).¹ There, the court
21 recommended dismissal Plaintiffs' claims with prejudice and explained to her the deficiencies of
22 her complaint and this claim in particular. The Court finds *all* of the deficiencies the court
23 explained in that case apply with equal force to Plaintiff's Complaint in the case at bar. Both cases
24 appear to allege identical claims against an identical Defendant.

25 Dismissal of this Complaint, especially without prejudice, is warranted under a variety of

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28 ¹ Indeed, Plaintiff specifically identifies this case in response to the following question in the IFP application:
 “Does the complaint which you are seeking to file raise claims that have been presented in other lawsuits?”

1 rules of civil procedure. *See Amsterdam v. Office of Hawaiian Affairs*, 2011 U.S. Dist. LEXIS
2 91639 at *8-9 (D. Haw., Aug. 16, 2011) (citing *Franklin v. Murphy*, 745 F.2d 1221, 1227 n.6 (9th
3 Cir. 1984)) (explaining that a paid complaint that is “obviously frivolous” may be dismissed *sua
4 sponte* for numerous grounds, including Rule 12(b)(6), Rule 12(b)(1), and Rule 8 itself); *Nasious
5 v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 (10th Cir. 2007) (stating that dismissing a
6 case under Rule 41(b) for failure to comply with Rule 8 allows the plaintiff “another go at
7 trimming the verbiage; accordingly, a district court may, without abusing its discretion, enter such
8 an order without attention to any particular proceedings.”).

9 Accordingly, this action is **DISMISSED without prejudice**. Through this Order of
10 dismissal, Plaintiffs have notice of the Complaint’s deficiencies and an opportunity to respond by
11 filing an Amended Complaint. If Plaintiff wish, she may file an Amended Complaint that adheres
12 to the pleading requirements of Rule 8 no later than April 1, 2013. Any such Amended
13 Complaint must set forth a clear statement of Plaintiff’s claims in order to give Defendant a fair
14 opportunity to respond and to allow the Court to perform its responsibilities in managing this
15 action. The Court further directs Plaintiff to the Report and Recommendation issued in her
16 previous case in the Eastern District of California for additional guidance. *Kalincheva v.*
17 *Neubarth*, 2012 U.S. Dist. LEXIS 154334 (E.D. Cal. Oct. 25, 2012)

18 **IT IS SO ORDERED.**

19 DATED: February 21, 2013



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21 Hon. Michael M. Anello
United States District Judge

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